

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 201902150	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 02/18/2019 2:20 AM	Location of Incident: inside of § 87(2)(b) Apt 16C; in the vicinity of § 87(2)(b)	Precinct: 42	18 Mo. SOL 8/18/2020	EO SOL 4/4/2021	
Date/Time CV Reported Wed, 02/27/2019 8:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/11/2019 11:13 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jesus Correa	04812	953782	PSA 7
2. POM James Weck	10752	963803	PSA 7
3. POM Dwight Wanzer	20981	963322	PSA 7
4. POM Hammer Colon	20710	965004	PSA 7
5. Officers			
6. POM Rafael Torres	21517	962844	PSA 7
7. POM Husamedin Umer	07309	963786	PSA 7
8. SGT Steven Counihan	4669	952620	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Armanda Delarosa	21393	962352	PSA 7
2. POM Dorian Navarro	08340	963666	PSA 7
3. POM Tyler Ubben	22865	947559	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Steven Counihan	Abuse: Sergeant Steven Counihan forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
B.POM Husamedin Umer	Force: Police Officer Husamedin Umer used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Hammer Colon	Force: Police Officer Hammer Colon used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Dwight Wanzer	Force: Police Officer Dwight Wanzer used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM James Weck	Force: Police Officer James Weck used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Jesus Correa	Force: Police Officer Jesus Correa used physical force against § 87(2)(b)	§ 87(2)(b)
G.POM Rafael Torres	Force: Police Officer Rafael Torres used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
H.POM Rafael Torres	Discourtesy: Police Officer Rafael Torres spoke discourteously to § 87(2)(b)	
I. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
J.SGT Steven Counihan	Abuse: Sergeant Steven Counihan threatened to arrest § 87(2)(b)	
K.SGT Steven Counihan	Abuse: Sergeant Steven Counihan forcibly removed § 87(2)(b) to the hospital	

Case Summary

On February 27, 2019, § 87(2)(b) submitted this complaint to the Internal Affairs Bureau (IAB). On March 11, 2019, this case was received by the CCRB via IAB log Number 19-8890.

On February 18, 2019, at approximately 2:20 a.m. § 87(2)(b) was with his girlfriend, § 87(2)(b) and her two children in § 87(2)(b)'s apartment at § 87(2)(b) in the Bronx. § 87(2)(b) called 9-1-1 and requested medical assistance for § 87(2)(b). Police Officers Jesus Correa, Dwight Wanzer, James Weck, Hammer Colon, Husamedin Umer and Rafael Torres from PSA 7 responded, and § 87(2)(b) allowed them to enter into the apartment. Police Officers Umer, Wanzer, Correa, Weck, Colon and Torres used physical force against § 87(2)(b) and Sergeant Steven Counihan was the supervisor who later responded to the location (**Allegations A: Abuse of Authority – Forcible Removal to the Hospital, § 87(2)(g) Allegations B-G: Force – Punched and Knead, § 87(2)(g)**). While attempting to place § 87(2)(b) in handcuff, Police Officer Torres and other officers used the word “fuck” (**Allegations H and I: Discourtesy – Word, § 87(2)(g)**). Sergeant Counihan from PSA 7 responded to the location. An ambulance arrived, and § 87(2)(b) was removed to the hospital. Medical records noted § 87(2)(b) did not sustain any injuries. In the hallway of § 87(2)(b) an individual, known to the investigation as § 87(2)(b) was intoxicated. Sergeant Counihan threatened § 87(2)(b) with arrest (**Allegation J: Abuse of Authority – Threat of Arrest, § 87(2)(g)**). Sergeant Counihan made the decision to remove § 87(2)(b) to the hospital (**Allegation K: Abuse of Authority – Forcible Removal to the Hospital, § 87(2)(g)**). EMS removed § 87(2)(b) to the hospital. No arrests were made, or summonses issued as a result of this incident.

The investigation received 14 body-worn camera videos from the NYPD (Board Reviews 01-14).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Steven Counihan forcibly removed § 87(2)(b) to the hospital.

Allegation (B) Force: Police Officer Husamedin Umer used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Hammer Colon used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Dwight Wanzer used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer James Weck used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Jesus Correa used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Rafael Torres used physical force against § 87(2)(b)

§ 87(2)(b) called 9-1-1 (Board Review 19) and requested an ambulance be sent to the apartment for medical assistance. § 87(2)(b) stated that § 87(2)(b) was a diagnosed schizophrenic, was non-compliant with his medication and was violent. The radio dispatcher

(Board Review 20) informed the responding units that the job was for a violent EDP with a history of domestic violence. There were no weapons involved or injuries. § 87(2)(b) opened the door and allowed Police Officers Umer, Colon, Wanzer, Weck, Correa and Torres into the apartment. Police Officers Umer, Colon, Wanzer, Weck, Correa and Torres became involved in a physical encounter with § 87(2)(b) Sergeant Counihan was the supervisor on scene and he arrived later in the incident.

In § 87(2)(b)'s CCRB statement (Board Review 15) he stated that had been diagnosed with schizophrenia and bi-polar disorder and had been suffering from panic and anxiety attacks prior to the incident. Upon Police Officers Umer, Colon, Wanzer, Weck, Correa and Torres entering the apartment, they asked § 87(2)(b) to place his hands behind his back. § 87(2)(b) placed his left arm straight behind his back because he was expecting to be handcuffed and taken to the ambulance. § 87(2)(b) was not able to observe who was behind him but felt that one handcuff was placed onto his left wrist and then his left arm was lifted up behind him so that his chest and head fell forward toward the floor. § 87(2)(b) fell face down onto the floor, felt pain in his left shoulder and lost consciousness. § 87(2)(b) lost and regained consciousness approximately four to five times. § 87(2)(b) was unable to see what was happening behind him but felt the officers were on his back. § 87(2)(b) felt a knee on his back, a knee on his head and multiple punches. § 87(2)(b) stated that in prior experiences he had fought back when in similar encounters but did not know what he was doing with his body during this incident. § 87(2)(b) was not able to provide any additional information due to his state of consciousness.

In Police Officer Torres' body-worn footage (Board Review 01), starting at 2:22:42 a.m. § 87(2)(b) is captured praying in the rear of the apartment. § 87(2)(b) is heard saying that § 87(2)(b) just needs his medication. Police Officer Umer informs the officers in the room § 87(2)(b) is performing a prayer, the Hazan, and asks § 87(2)(b) if he is Muslim. § 87(2)(b) turns around so that his back is toward the six police officers and places both of his hands in his front two pants pockets. Police Officer Correa approaches § 87(2)(b) from behind and pulls his hands out of his pockets. Police Officer Torres approaches § 87(2)(b) and takes ahold of his right hand. § 87(2)(b) pulls his right hand away from the police officers and toward the front of his chest. § 87(2)(b) drops to the floor in front of Police Officer Correa. At 2:24:06 a.m. § 87(2)(b) is face down on the floor with his left arm bent and underneath his chest. § 87(2)(b) is placed in handcuffs and all the police officers move away from him.

In Police Officer Hammer Colon's body-worn footage (Board Review 02) at 2:23:31 a.m. Police Officer Weck is captured moving his arm four times in a punching motion. The video does not capture where Police Officer Weck's strikes land.

In their statements to the CCRB Police Officer Weck and Torres (Board Reviews 16 and 17) were generally consistent in their independent recollection with the events captured in the body-worn camera footage. In Police Officer Correa's statement (Board Review 18) his recollection of the physical encounter with § 87(2)(b) was refreshed after he was presented with body-worn camera video. Police Officers Weck stated that § 87(2)(b) was approached to be placed in handcuffs due to the manner in which § 87(2)(b) was tensing his body and the information

provided that he had not been compliant with his medication, which made the police officers on scene feel unsafe. Police Officers Torres and Correa stated that § 87(2)(b) was approached because at the moment when he turned around and placed his hands in his pockets the police officers did not know if § 87(2)(b) had anything in his pockets and could not see what § 87(2)(b) was doing which was a safety concern. Sergeant Coughlin stated in his interview (Board Review 24) he did not have any independent recollection of the incident. Sergeant Coughlin identified himself in Police Officer Umer's body-worn camera footage from inside the apartment.

Medical documents noted that § 87(2)(b) was admitted to the hospital due to his noncompliance with his medication for diagnosed schizoaffective disorder. § 87(2)(b)'s left shoulder and arm were examined but yielded negative results for any dislocation, soft tissue damage or fractures (see privileged documents).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b) turned his back to the police officers and placed his hands in his front pants pockets. The physical encounter between the police officers present on scene and § 87(2)(b) lasted approximately 2:48 minutes. At no point during the body-worn camera videos is an officer captured with their knees on either § 87(2)(b)'s back or head. Sergeant Coughlin was the supervisor on scene and therefore the allegation of the removal to the hospital will be pleaded against him.

According to NYPD Patrol Guide, Section 221-02 (Board Review 21), when an officer must gain compliance or control of an uncooperative subject, they should take the necessary action to protect personal safety. De-escalation techniques should be used when appropriate. No more than the reasonable force necessary should be applied to gain control. Place the individual in a seated position or lay them sideways as soon as safety permits.

According to NYPD Patrol Guide, Section 221-13 (Board Review), an individual is to be taken into protective custody when an officer reasonably believes that a person who is apparently mentally ill or emotionally disturbed is conducting themselves in a manner likely to result in serious injury to themselves or others.

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)

Allegation (H) Discourtesy: Police Officer Rafael Torres spoke discourteously to § 87(2)(b)

Allegation (I) Discourtesy: Officers spoke discourteously to § 87(2)(b)

In Police Officer Torres' body-worn camera footage (Board Review 01) at 2:23:41 a.m. § 87(2)(b) is face down on the floor with multiple police officers attempting to handcuff him. A voice is captured saying, "Fuck," twice. At 2:24:51 a.m. Police Officer Torres is captured saying, "His fucking sweater is in the way" as handcuffs are attempting to be placed on § 87(2)(b)

In Police Officer Wanzer's body-worn camera footage (Board Review 03) at 2:23:50 a.m. an individual says, "Fuck."

In the CCRB testimonies of Police Officers Torres and Correa (Board Reviews 17 and 18) they were presented with the body-worn camera footages from both Police Officer Torres' and Police Officer Wanzer's body-worn cameras. Police Officers Torres and Correa were not able to recognize the voices who said, "Fuck," at 2:23:41 a.m. in Police Officer Torres' video recording or at 2:23: 50 a.m. in Police Officer Wanzer's recording. Police Officer Torres stated that he was the individual who stated, "His fucking sweater is in the way," and used the discourteous language because of the nature of the job involved a reported violent EDP and the physical interaction which he was involved in with § 87(2)(b)

According to Disciplinary Case No. 2013-10143 (Board Review 22) an officer was justified in the use of profanity during a stressful encounter when an individual is resisting arrest due to the statement being an "impulsive response" to the situation.

Police Officer Torres explained that due to the physical interaction he was experiencing with § 87(2)(b) and the nature of the job involving a violent EDP, he made the statement, "His fucking sweater is in the way." Because this statement was made during the time the police officers were in the process of handcuffing § 87(2)(b) and during a stressful physical encounter, the investigation determined that Police Officer Torres was justified in the use of his discourteous statement. § 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Sergeant Steven Counihan threatened to arrest § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Steven Counihan forcibly removed § 87(2)(b)
to the hospital.

On October 1, 2019, the investigation contacted § 87(2)(b) over the telephone (Board Review 23). § 87(2)(b) stated that he was not present at the incident location on the date of the incident, nor was he involved in any incident on that day with police officers. No statement was obtained from § 87(2)(b) because he did not recall the incident. A photograph of § 87(2)(b) from a prior arrest was obtained and it was determined that § 87(2)(b) was the individual captured in the body-worn camera footage (Board Review 24).

§ 87(2)(b), § 87(2)(g)

e.

Civilian and Officer CCRB Histories

- This is the only CCRB case to which § 87(2)(b) has been a party (Board Review 26).
- This is the only CCRB case to which § 87(2)(b) has been a party (Board Review 27).
- Police Officer Umer has been a member-of-service for two years and has one prior CCRB allegation in one case with no substantiated allegations. § 87(2)(g)
- Police Officer Torres has been a member-of-service for three years and has no prior CCRB allegations.
- Police Officer Colon has been a member-of-service for one year and has no prior CCRB allegations.
- Police Officer Wanzer has been a member-of-service for two years and has no prior CCRB allegations.
- Police Officer Weck has been a member-of-service for two years and has one prior CCRB allegation in one case with no substantiated allegations. § 87(2)(g)
- Police Officer Correa has been a member-of-service for six years and has one prior CCRB allegation in one case with no substantiated allegations. § 87(2)(g)
- Sergeant Counihan has been a member-of-service for seven years and has no prior CCRB allegations.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b)

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - A Notice of Claim search request was submitted to the New York City Comptroller's Office on November 1, 2019, and on November 8, 2019, an email was received from the New York City Comptroller's Office advising no Notice of Claim had been filed by either § 87(2)(b) [REDACTED] or § 87(2)(b) [REDACTED] (Board Review 30).
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Squad No. 15

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date